IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 313.

BROTHERHOOD OF RAILROAD TRAINMEN *et al.*,

Petitioners,

v.

CHICAGO RIVER & INDIANA RAILROAD COMPANY *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF THE AMERICAN SHORT LINE RAILROAD ASSOCIATION AS AMICUS CURIAE

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INTEREST OF THE AMICUS CURIAE

The American Short Line Railroad Association, on whose behalf this brief is filed with the consent of the parties, is an unincorporated association with a present membership of 285 railroads.

Many of the Association's members furnish essential switching and interchange service to basic industrial plants in various parts of the nation. Without such service, operation of those plants would be stopped or substantially curtailed, the communities in which those plants are located would immediately be seriously affected, and the chain reaction would soon spread to many other plants and industries

which are dependent upon the basic plants as customers or suppliers. Other members of the Association serve as feeder lines in rural communities, moving produce out of and freight into such communities. Disruption of feeder service would have serious local consequences and would disrupt the movement of large quantities of freight by the trunk line railroads. In the case of each Association member, therefore, relatively few employees hold the economic key to the continued operation of large segments of industry or the economic activities of substantial rural areas.

The procedures provided by the Railway Labor Act have, thus far, enabled the carriers and the labor organizations representing their employees to carry on their relations and settle their differences without substantial resort to economic warfare. The outcome of this case, and the companion case *Central of Georgia Railway Co.* v. *Brotherhood of Railroad Trainmen, etc., et al.* (No. 84), will determine whether those provisions will continue to have life and vitality as an effective means of maintaining industrial peace on the railroads of the Association's members, or whether they will hereafter exist merely as an impotent expression of Congressional hope.

QUESTION PRESENTED

The question presented in this case, and also in the companion case, is whether the procedures prescribed by the Railway Labor Act for the settlement of disputes between carriers and their employees are enforceable by the federal courts.

The specific procedure which is involved in this case is the procedure for the settlement of grievances. Other procedures are prescribed in the Act for the mediation of disputes over contract changes, which procedures also are mandatory and exclusive until they have been exhausted.

ARGUMENT

POINT I

POWER OF THE FEDERAL COURTS TO ENFORCE THE PROVISIONS OF THE RAILWAY LABOR ACT IS NOT WITHDRAWN BY THE NORRIS-LA GUARDIA ACT.

The problem presented in this phase of the case arises by reason of the fact that there are two important statutes, both enacted by Congress, which seemingly are inconsistent on their face. The Norris-LaGuardia Act, in broad and sweeping language, purports to ban the issuance of injunctions in cases arising out of labor disputes. The Railway Labor Act, on the other hand, in revisions enacted two years after passage of the Norris-LaGuardia Act, sets forth in elaborate detail the rights and obligations of carriers and their employees in relation to each other and prescribes comprehensive procedures for the settlement of controversies between them, one of the stated purposes of the Act being "to avoid any interruption to commerce or to the operation of any carrier engaged therein." The Railway Labor Act thus appears to create rights enforceable by the federal courts; while the Norris-LaGuardia Act, if literally applied, would make those rights illusory and without remedy.

Fortunately, this Court is not committed to "narrowly literal construction" of statutory words, and will look beyond the words to statutory object and policy and avoid construction that "would produce incongruous results." *Mastro Plastics Corp. et al.* v. *National Labor Relations Board,* 350 U. S. 270, 285-286 (1956); *National Labor Relations Board* v. *Lion Oil Company et al.,* 25 U. S. L. Week 4098, 4099 (U. S. Sup. Ct., January 22, 1957). Application of those rules of construction, it is submitted, requires that the enforceability by the federal courts of the procedures prescribed by the Railway Labor Act be upheld.

Were it not for the fact that the question presented here has now arisen in a different context than in previous cases, it would seem to have been conclusively settled by the prior decisions of this Court.

The first case in which a similar question arose did not involve the Norris-LaGuardia Act, but its predecessor, Section 20 of the Clayton Act (29 U. S. C. § 52). *Texas & New Orleans Railroad Company et al.* v. *Brotherhood of Railway & Steamship Clerks et al.*, 281 U. S. 548 (1930). In that case a union obtained an injunction to compel a carrier to bargain with it, on the ground that the carrier was required to do so under the Railway Labor Act. Among the defenses advanced by the carrier, and rejected by this Court, was the contention that Section 20 precluded the issuance of an injunction because the union had not made a showing of an irreparable injury to a property right as required under that Section. The opinion of this Court, by Chief Justice Hughes, also states (p. 571):

> "It may be doubted whether Section 20 can be regarded as limiting the authority of the court to restrain the violation of an explicit provision of an act of Congress, where an injunction would otherwise be the proper remedy. . . ."

The dictum in the foregoing case was followed in *Virginian Railway Co.* v. *System Federation No. 40, etc., et al.*, 300 U. S. 515 (1937). There the plaintiff union, relying on the Railway Labor Act, obtained an injunction requiring the defendant carrier to bargain with it and to stop influencing its employees to join a company union. The injunction was upheld by the Circuit Court and by this Court, despite the contention of the defendant that such an injunction was invalid under the Norris-LaGuardia Act.

The opinion of the Circuit Court, by Judge Parker, states (84 F. 2d at p. 647):

> ". . . Statutes in derogation of the ordinary equity powers of the court should be strictly construed;

> and a provision manifestly intended to provide against blanket injunctions, of which complaint had been frequently made prior to the passage of the statute, should not be construed to deprive the court of the power to enforce by mandatory decree a right created by Act of Congress."

In the opinion of this Court, Mr. Justice Stone stated that the provisions of the Railway Labor Act

> "... cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act. ..." (p. 563)

The decision in the *Virginian* case was followed in *Graham et al.* v. *Brotherhood of Locomotive Firemen & Enginemen,* 338 U. S. 232 (1949) and *Brotherhood of Railroad Trainmen et al.* v. *Howard et al.,* 343 U. S. 768 (1952). In the *Graham* case twenty-one Negro firemen obtained an injunction against the union, restraining compliance with an agreement between the union and the various carriers which made it impossible for Negro firemen to be promoted, on the ground that such an agreement was prohibited under the Railway Labor Act. The opinion of this Court, by Mr. Justice Jackson, states (pp. 237-8):

> "The respondent has strenuously urged throughout that in view of the provisions of the Norris-LaGuardia Act, 29 U. S. C. §§ 101 *et seq.,* the District Court was without jurisdiction to grant relief by injunction.
>
> "The Court of Appeals did not pass upon this contention, and were it a question of first impression we should not be disposed to consider it here at the present stage of the proceedings. But this is not a question of first impression. In *Virginian R. Co.* v. *System Federation,* 300 U. S. 515, we held that the Norris-LaGuardia Act did not deprive federal courts of jurisdiction to compel compliance with positive mandates of the Railway Labor Act, 45 U. S. C. §§ 151 *et seq.,* enacted for the benefit and protection, within a particular field, of the same groups whose rights are preserved by the Norris-LaGuardia Act. . . .

"But the Brotherhood urges that the controversy in the *Virginian* case did not involve a labor dispute within the meaning of the Norris-LaGuardia Act and that accordingly that case must be distinguished on its facts. The Act defines a 'labor dispute' to include 'any controversy concerning terms or conditions of employment, or concerning the *association or representation of persons* in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment . . . .' 29 U. S. C. § 113(c). (Emphasis supplied.) We do not accept the Brotherhood's invitation to narrow the meaning of that term. The purpose of the Act would be vitiated and the scope of its protection limited were it to be construed as not extending to efforts of a duly certified bargaining agent to obtain recognition by an employer. Moreover, if this Court had considered that a labor dispute was not involved, it would hardly have taken the trouble, in the *Virginian* case, to refute contentions based upon parts of the Act, which as a whole extends its protection solely to such disputes.

". . .

"Nor does the Norris-LaGuardia Act contain anything to suggest that it would deprive these Negro firemen of recourse to equitable relief from illegal discriminatory representation by which there would be taken from them their seniority and ultimately their jobs. Conversely there is nothing to suggest that, in enacting the subsequent Railway Labor Act provisions insuring petitioners' right to non-discriminatory representation by their bargaining agent, Congress intended to hold out to them an illusory right for which it was denying them a remedy. If, in spite of the *Virginian*, *Steele* and *Tunstall* cases, *supra*, there remains any illusion that under the Norris-LaGuardia Act the federal courts are powerless to enforce these rights, we dispel it now. . . ."

In the *Howard* case, the Court, on the authority of the *Graham* case, upheld the jurisdiction of the federal courts to issue an injunction "to protect Negro railroad

employees from loss of their jobs under compulsion of a bargaining agreement, which, to avoid a strike, the railroad made with an exclusively white man's union", despite defendants' contention that the Norris-LaGuardia Act prevented its issuance.

Concededly, in none of the foregoing cases was an injunction sought by a carrier against the union. But the Norris-LaGuardia Act makes no distinction based upon the position of the plaintiff. If its provisions do not suffice to deprive the plaintiffs involved in the foregoing cases from securing judicial enforcement by injunction of the mandates of the Railway Labor Act, they should be equally inapplicable in the present case. There is no reason or justification for construing the Norris-LaGuardia Act as imposing a greater burden when an employer seeks injunctive relief, than it does when a union or a Negro seeks such relief. The rights of unions and employees under the Act are not of any higher order or more worthy of legislative or judicial concern than are the rights of carriers and the public to have labor controversies settled by the orderly and peaceful procedures prescribed by Congress in the Railway Labor Act instead of by economic warfare.

POINT II

THE PROCEDURE PRESCRIBED BY THE RAILWAY LABOR ACT FOR THE ADJUSTMENT OF GRIEVANCES IS MANDATORY AND PRECLUDES THE ALTERNATIVE REMEDY OF A STRIKE.

The petitioners in this case contend that the procedure prescribed by the Railway Labor Act for the adjustment of grievances by the National Railroad Adjustment Board is not mandatory and does not preclude the alternative remedy of a strike, hence a labor organization may not be enjoined from striking to force the settlement of a grievance instead of following the procedure prescribed by law.

Respondent, in answering that contention, elaborates and discusses in full in its brief the legislative history of the

1934 amendments to the Railway Labor Act. There is no need to repeat that discussion here, except to express concurrence in the conclusion that it does establish that there was a general understanding when the 1934 amendments were being enacted that the adjustment of grievances by the new procedure was not only to be binding and enforceable upon both parties, but that, once invoked, it was to preclude the employees from striking. The statute does not compel the parties to invoke the prescribed procedure, and in that limited sense the procedure is not wholly compulsory. But once the procedure is invoked by either party, there is no provision for any alternative remedy by the other party.

The conclusion that Congress intended that the new provisions for the adjustment of grievances be mandatory is fortified by the unhappy experience with prior legislation in the same area, beginning as far back as the Transportation Act, 1920 (41 Stat. 456, 469), and by the subsequent trend of legislation away from voluntary measures and toward mandatory procedures. The Transportation Act, 1920, which provided for the return of the railroads to private operation following their control by the Government during the First World War, included (in Title III) an elaborate procedure for the mediation of railroad labor disputes by a Railroad Labor Board consisting of 9 members, 3 appointed by the President, 3 by the carriers and 3 by the railroad Brotherhoods. The statute made it clear that the decisions of the Board were enforceable only by the pressure of public opinion. The infirmities of that legislation are commented upon in the decisions of this Court in *Pennsylvania Railroad Company* v. *United States Railroad Labor Board et al.*, 261 U. S. 72 (1923) and *Texas & New Orleans Railroad Company et al.* v. *Brotherwood of Railway & Steamship Clerks et al.*, 281 U. S. 548, *supra.*

The voluntary procedures prescribed by the provisions of the Transportation Act were so ineffective that both political parties went on record as supporting a change; and

in 1926 those provisions were replaced by the Railway Labor Act (44 Stat. 577), which moved in the direction of compulsion. That Act made arbitration awards judicially enforceable, provided for the creation of an Emergency Board to be appointed by the President to investigate any dispute threatening to deprive any section of the country of essential transportation service and prohibited any change in the conditions out of which such dispute arose until 30 days after the Emergency Board's report thereon to the President. It also included extensive provisions relating to the settlement of grievances by adjustment boards established by agreement of the carriers and their employees and for the settlement of any disputes by arbitration agreed to by the parties, but by the terms of the statute those procedures remained optional and voluntary in nature.

Because of the continuing ineffectiveness of the prescribed procedures, the 1934 amendments were proposed and enacted (48 Stat. 1185). The legislative history of those amendments makes it clear that both the carriers and the railroad Brotherhoods recognized that the previous voluntary measures had failed and that under the new amendments grievances were to be effectively settled, without resort to strikes, by the Adjustment Board procedure therein provided.

Under the circumstances, in view of the unsatisfactory experiences of Congress with earlier legislation providing voluntary procedures for the settlement of grievances and other disputes and its obvious purpose in 1934 to correct the situation and to provide more effective procedures, it is only logical to conclude that Congress intended to make the new procedures mandatory.

An analogous problem of interpretation has arisen in cases in which collective bargaining contracts have included specific procedures for the settlement of grievances, but have not contained express no-strike provisions. In such cases the courts have implied a no-strike obligation from

the existence of the agreed procedures for the settlement of grievances. *International Brotherhood of Teamsters, etc.* v. *W. L. Mead, Inc.*, 230 F. 2d 576 (1st Cir. 1956), *cert. denied*, 352 U. S. 802 (1956); *United Construction Workers et al.* v. *Haislip Baking Company, etc.*, 223 F. 2d 872 (4th Cir. 1955), *cert. denied*, 350 U. S. 847 (1955); *National Labor Relations Board* v. *Dorsey Trailers, Inc.*, 179 F. 2d 58 (5th Cir. 1950); see also *National Labor Relations Board* v. *Sands Manufacturing Co.*, 306 U. S. 332 (1939). By the same line of reasoning, it should be concluded that when Congress established a detailed procedure for the settlement of grievances involving employees of common carriers, for the expressed purpose of avoiding interruptions to commerce, it intended to make that procedure mandatory and to rule out the alternative remedy of a strike.

CONCLUSION

The cases referred to in the foregoing discussion fully warrant the conclusion that, where an antinomy exists between the positive mandates of the Railway Labor Act and the negative prohibitions of the Norris-LaGuardia Act, the former prevails over the latter; that the shield of the latter Act is not available to a defendant who violates the former.

Although behind the Norris-LaGuardia Act is the laudable purpose of protecting the legitimate interests and activities of organized labor, behind the Railway Labor Act is the even more basic and fundamental purpose of protecting the public against the widespread chaos and hardships that result from application of the law of the jungle in labor relations on key transportation systems.

At stake in this case, and in the *Central of Georgia Railway* case, is the whole structure of peaceful and orderly procedures for the settlement of railroad labor disputes erected by the Railway Labor Act. For if it should be

established that there is no means of enforcing those procedures and that they may be ignored with impunity, that will of certainty put an end to the Act's effectiveness and will defeat the stated purposes of the Act "to avoid any interruption to commerce or to the operation of any carrier" and "to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules or working conditions." It would also produce the incongruous result that the federal courts may protect the rights of unions and employees under the Act, but that they may not protect the paramount rights of the public to have labor disputes on the nation's transportation systems settled by the peaceful procedures prescribed by Congress.

The judgment below in this case should be affirmed, and for the same reasons the judgment in the companion case should be reversed.

February 8, 1957.

Respectfully submitted,

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